

gave a statement he was asked by the officer who was going to record it in what Chinese dialect he wished to speak. He said he wished to speak in the Cantonese dialect and he wanted a Cantonese interpreter to which the officer replied that there was no Cantonese interpreter available. He then made his statement, speaking in Cantonese, which the officer recorded. After he had finished his statement he said the officer read back, speaking in the Hokkien dialect, the statement to him. He said he did not understand what the officer said as he could understand a few words in Hokkien only and that he signed the statement because he was asked to sign it and for fear he might be assaulted if he did not sign it.

The recording officer, on the other hand, gave evidence that the appellant was offered a choice and chose to speak in Hokkien. He denied that the appellant requested for a Cantonese interpreter. He said the appellant spoke fluent Hokkien and understood him when he spoke to the appellant in Hokkien. He said that after he had finished recording the appellant's statement he read it back to the appellant in Hokkien, that he invited the appellant to make any correction he wished and that the appellant said he had no correction to make after which the appellant signed the recorded statement.

The trial judges accepted the recording officer's version as to what exactly happened when the statement was recorded and found that he was speaking the truth as to the circumstances under which the statement was recorded. They also found that the statement was made voluntarily without any threat, promise or inducement.

The submission before us is that the trial judges should have found on the evidence before them that the appellant was not given an opportunity to speak in Cantonese which is his native dialect, that the appellant did not understand the contents of the statement when he signed it because he could not understand the recording officer when he read back to him in Hokkien the contents of the statement and that the appellant was under duress at the material time. We do not accept this submission. There was evidence which the trial judges could properly act on in arriving at their decision to admit the appellant's cautioned statement in evidence.

The next contention is that the trial judges erred in law in convicting the appellant under section 3(a) of the Act in that there was no evidence to support a conviction under that section. The charge on which the appellant was convicted reads:—

"You, Lee Kin Kheong, are charged that on or about the 22nd day of April 1976 at about 4.20 p.m. at Kampong Soppoo, Singapore, did unlawfully traffic in a controlled drug specified in Class A of Part I of the First Schedule of the Misuse of Drugs Act, 1973 (No. 5 of 1973), to wit, 40.37 grams of diamorphine and you have thereby committed an offence under section 3(a) of the Misuse of Drugs Act, 1973 (No. 5 of 1973), punishable under section 29 of the aforesaid Act."

Section 3(a) of the Act reads:—

"3. Except as authorised by this Act or the regulations made thereunder, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not such other person is in Singapore to —

(a) traffic in a controlled drug."

A 'Traffic' is defined in section 2 of the Act to mean, *inter alia* —

"(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a) above,

otherwise than under the authority of this Act or the regulations made thereunder."

B The evidence, as accepted by the trial judges, showed that the appellant was carrying on his person two newsprint wrappings, containing seven packets of a substance, which on analysis had a diamorphine content of 40.37 grams, while riding a bicycle along a public street. He had obtained these two newsprint wrappings, knowing their contents, from a person known to him as Ah Hock and was carrying them with him to deliver to a person known to him as Botak. Diamorphine is a controlled drug within the meaning of the Act. In our judgment, on these facts, and having regard to the definition of "traffic" in section 2 of the Act, the appellant was properly convicted as charged and his appeal against conviction is dismissed. As the quantity of diamorphine in which the appellant unlawfully trafficked exceeded 15 grams, his appeal against the sentence of death passed must also be dismissed.

Appeal dismissed.

E Solicitors: *H.L. Chan & Co.*

RE APPLICATION BY YEE YUT EE

[O.C.J. (Choor Singh J.) June 12, 1978]

[Singapore — Originating Motion No. 30 of 1978]

F *Administrative Law — Certiorari — Jurisdiction of High Court — Industrial Arbitration Court — Duty to act judicially — Excess of jurisdiction — Error of law — Industrial Relations Act (Cap. 24), s. 46.*

Companies — Director's personal liability — Companies Act (Cap. 185).

G *Labour Law — Industrial Arbitration Court — Duty to act judicially — Error of law — Acting in excess of jurisdiction — Industrial Relations Act (Cap. 24), s. 46.*

H The Industrial Arbitration Court made an order that the applicant as secretary and director of a limited company was personally liable for the payment of claims and debts of the company. Before the High Court it was conceded that in the order of the Industrial Arbitration Court there was a manifest error of law. The High Court considered the effect of the provisions of the Industrial Relations Act (Chapter 124) section 46 (the ouster of jurisdiction clause in the statute) and the jurisdiction of the High Court to correct the error of the statutory tribunals.

I **Held:** (1) provisions similar to section 46 of the Industrial Relations Act have been labelled "no *certiorari*" clauses or "ouster clauses" and have been dealt with in many reported cases. The cases show that when the right to *certiorari* had been expressly taken away by statute the court relied upon the proposition that Parliament could not have intended a tribunal of limited jurisdiction to be permitted to exceed its authority without the possibility of direct correction by a superior court. It has been held that *certiorari* would issue, notwithstanding the presence of words taking away the right to apply for it, if the inferior tribunal was improperly constituted or if it lacked or exceeded jurisdiction, or failed to comply with essential preliminaries, or if a conviction or order had been procured by fraud or collusion or where there had been a breach of the rules of natural justice;

(2) when there is a defect in jurisdiction, the High Court will intervene. It would be intolerable if in such a case as this, there was no means of correcting the error. The control which the High Court exercises over inferior tribunals in a supervisory capacity extends not only to seeing that the inferior tribunals keep within their jurisdiction but also to seeing that they observe the law. In this case the impugned order contained an error of law which caused the Industrial Arbitration Court to exceed its jurisdiction. It clearly had no power to make that order and in making it, it acted in excess of or without jurisdiction, i.e. *ultra vires* the powers given to it under the Industrial Relations Act;

(3) it is a cardinal principle of company law that except in cases of fraud, breach of warranty of authority and other exceptional circumstances, a director is not liable for the debts of an incorporated company. There was nothing in the Companies Act (Cap. 185) which makes a director personally liable for the debts of the company. Nor was there anything in the Industrial Relations Act (Cap. 124) which modifies this fundamental doctrine of company law.

Cases referred to:-

- (1) *Rex v. Woodhouse* [1906] 2 K.B. 501 at 535.
- (2) *Regina v. Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators' Association* [1972] 2 Q.B. 299.
- (3) *Ex parte Bradlaugh* (1878) 3 Q.B.D. 509.
- (4) *Reg. v. Hurst, Ex parte Smith* [1960] 2 Q.B. 133, 142.
- (5) *Reg. v. Medical Appeal Tribunal, Ex parte Gilmore* [1957] 1 Q.B. 574, 586.

The following authorities and cases were also cited in argument: *Pennington* on Company Law 3rd Edn., *Hahlo's* Case-book on Company Law 2nd Edn., *Powell-Smith: The Law and Practice Relating to Company Directors, S.A. de Smith: Judicial Review of Administrative Action* 3rd Edn., *R. v. Northumberland Compensation Appeal Tribunal*, [1952] 1 K.B. 338, *The King v. Foster, ex parte Isaac* [1941] V.L.R. 77, *Coal Miners' Industrial Union of Workers of W. Australia v. Amalgamated Collieries* (1960) 104 C.L.R. 437, *Labour Relations Board of Saskatchewan v. John East Iron Works* [1949] A.C. 134 at 151-2, *Re Application by the Union Omnibus* [1977] 2 M.L.J. 260, "Development of Administrative Law in Malaysia since Merdeka" by Professor M.P. Jain [1977] 2 M.L.J. ms ii, *South East Asia Fire Bricks Sdn. Bhd. v. Neo-metallic Mineral Products Manufacturing Employees Union* [1975] 2 M.L.J. 250; [1976] 2 M.L.J. 67, F.C., *Pringle v. Frazer* (1972) 26 D.L.R. 3rd 28, *R. v. Ontario Labour Relations Board* (1968) 68 D.L.R. 2nd 109, *R. v. Dickenson* (1857) 7 E & B 831; 119 E.R. at 1455.

APPLICATION FOR CERTIORARI.

Ng Kian Fong for the applicant.

Chao Hick Tin (Deputy Senior State Counsel) for the Attorney-General.

Choor Singh J. (delivering oral judgment): In this case Mr. Ng Kian Fong moves on behalf of Madam Yee Yut Ee for an order of *certiorari* to bring up and quash a decision dated the 9th day of January 1978 made by the Industrial Arbitration Court on the ground that there is a manifest error of law on the face of the record.

Mr. Chao Hick Tin, Deputy Senior State Counsel, who appears for the Attorney-General, concedes that such an error appears and does not oppose an order of *certiorari*. Before, however, making such an order, the court must be satisfied that it has jurisdiction to do so.

The facts which are not in dispute are these. The applicant Madam Yee Yut Ee is the Secretary and former Director of Trans-Market Research Pte. Ltd. a company incorporated in Singapore and having its registered office at Room 808, O.G. Building, Upper

A Cross Street, Singapore. The company is a wholly owned subsidiary of Inmarco Inc. of 7655, Sunset Boulevard, Los Angeles, California, United States of America.

The company, having operated at a loss since 1972, decided in October 1975 to retrench its staff in Singapore. By letter dated October 17, 1975 the company terminated the services of three of its employees, namely Abdul Basir Sumaidi, Chow Moh Lin and Nancy Chua Poh Tee. As a result of this retrenchment there arose a dispute on the question of retrenchment benefits claimed by the aforesaid employees and this dispute was referred to the Industrial Arbitration Court by joint application of the company and the Singapore Manual and Mercantile Workers Union (hereafter called "the Union") representing the retrenched employees.

The dispute came up for hearing before the Industrial Arbitration Court on June 18, 1976. The company was not represented at the hearing although duly served. The Managing Director of the company, one Miss Loretta Lee was present in Singapore on that day but she did not appear at the hearing. The Industrial Arbitration Court after hearing the case presented by the Union handed down its Award awarding retrenchment benefits to the aforesaid three employees which were eventually computed by the Acting Registrar of the Industrial Arbitration Court to amount to a total sum of \$10,180.63.

On the day the Industrial Arbitration Court made its award, i.e. on June 18, 1976, the applicant was not a Director of the Company. After the award was made, the Managing Director of the Company disappeared from Singapore. As there was no other resident director in Singapore, the applicant was appointed a director in July 1976. The applicant claims that her appointment as a director was to comply with section 122(1) of the Companies Act which requires that at least one director should be ordinarily resident in Singapore.

In spite of repeated reminders, the company failed to comply with the award made by the Industrial Arbitration Court. Finally on December 19, 1977 the company received a summons to appear before the Industrial Arbitration Court to answer a charge that it did:

- (i) fail to comply with the Order of the Industrial Arbitration Court made on 18th day of June 1976 to pay retrenchment benefits to three former employees amounting to \$10,180.63;
- (ii) fail on 19th day of July 1977 to appear and show cause pursuant to section 55 of the Industrial Relations Act why the Company should not be ordered to comply with the Order made on June 18, 1976; and
- (iii) fail to make payments pursuant to the Order to comply made under section 55 of the Industrial Relations Act on July 19, 1977 despite proper notice of the Order having been served on the Company.

At the hearing of this Summons on January 9, 1978 the applicant appeared and was represented by counsel. The Union was also represented by counsel. After

hearing submissions by both counsel, the Industrial Arbitration Court, constituted by the President alone, made an order to the effect that as Secretary and Director of the company, the applicant was to be personally liable for the payment of the retrenchment benefits amounting to \$10,180.63. The President made this order in spite of the fact that it was clearly pointed out to him by counsel for the applicant that under company law neither a secretary nor a director is personally liable for the debts of a company and that this principle of law has not in any way been modified by the Industrial Relations Act (Chapter 124).

On February 2, 1978 the applicant resigned from the office of director of the company. She now applies to this court for an Order of *Certiorari* to remove into this court and quash the Order made by the Industrial Arbitration Court on January 9, 1978 ordering or holding the applicant to be personally liable for the payment of the sum of \$10,180.63 being retrenchment benefits awarded to three former employees of the Company under an award made on June 18, 1976.

It is well established that the ambit of *certiorari* can be said to cover every case in which a body of persons, of a public as opposed to a purely private or domestic character, has to determine matters affecting subjects provided always that it has a duty to act judicially.

The remedy may be obtained on the ground of a defect in the jurisdiction of the court or tribunal below, or of a breach of the rules of natural justice in those proceedings or an error of law on the face of the proceedings.

Certiorari is said to be a discretionary remedy, and therefore it will not normally be granted unless and until the plaintiff has exhausted other remedies reasonably available and equally appropriate such as a statutory right of appeal.

If the plaintiff is a "person aggrieved" and provided he has no other remedy, it seems that the court will almost certainly grant a *certiorari* on his application for it is clearly necessary in cases where questions of jurisdiction are involved and where no provision is made for appeals on points of law.

The first issue in this case is whether or not the respondent is required to act judicially. The Industrial Arbitration Court is a creature of statute. Its procedures and powers are laid down in the Industrial Relations Act (Chapter 124). In the hearing and determination of a trade dispute it has to act "according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms". See section 59 of Chapter 124. It has been held that in general a judicial act is one which involves "the exercise of some right or duty to decide" a question affecting individual rights in order to provide scope for a writ of *certiorari* at common law". See *Rex v. Woodhouse*.⁽¹⁾ It has also been held that it is enough in order for *certiorari* to lie for the tribunal to be under a duty to act fairly. See *Regina v. Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators' Association*.⁽²⁾ There cannot therefore be any doubts on this issue. The respondent is quite

A clearly required to act fairly if not judicially in the determination of trade disputes.

The second issue is whether or not there is any error of law on the face of the record. Here again, I think the issue is free of doubt. The impugned Order made by the President of the Industrial Arbitration Court on January 9, 1978 to the effect that the applicant is personally liable for the payment of \$10,180.63 is clearly erroneous in law. The applicant was not a party to the proceedings in which this Order was made. The parties to the proceedings were the Company and the Union.

It is true that at the date of the impugned Order, the applicant was a director of the Company. It is however a cardinal principle of company law that except in cases of fraud, breach of warranty of authority and other exceptional circumstances, a director is not liable for the debts of an incorporated company. There is nothing in the Companies Act (Chapter 185) which makes a director personally liable for the debts of the company. Nor is there anything in the Industrial Relations Act (Chapter 124) which modifies this fundamental doctrine of company law. No one would ever volunteer to be a director of an incorporated company if he or she was to be held liable in law for the debts of the company.

The impugned Order is quite clearly illegal because it is not authorised by law. There is accordingly a patent error of law on the face of the record. This is very correctly conceded by counsel for the respondent.

The next issue which is really the main issue in this case is the effect of section 46 of the Industrial Relations Act which provides as follows:—

F "46. Subject to the provisions of this Act an award shall be final and conclusive, and no award or decision or order of a Court or the President or a referee shall be challenged, appealed against, reviewed, quashed, or called in question in any court and shall not be subject to *certiorari*, prohibition, mandamus or injunction in any court on any account."

It is clear that no appeal is given from a decision of an Industrial Arbitration Court. When Parliament sets up a tribunal and refers matters to it, it becomes a question of policy as to whether to provide for an appeal. Sometimes that is thought to be appropriate. Thus, in the Land Acquisition Act (Chapter 272) provision is made for the hearing of appeals by a Land Appeals Board against awards made by Collectors of Land Revenue in respect of land acquired by the Government. It is enacted that though the decision of the Land Appeals Board (presided by a judge) was to be final, there could be an appeal to the Court of Appeal by a party aggrieved by a decision of the Board on any point of law. Sometimes, on the other hand, it is not thought appropriate to provide for an appeal. In reference to the Industrial Relations Act, it was presumably thought that the advantages of securing finality of decisions outweighed any disadvantages that might possibly result from having no appeal procedure.

Provisions similar to section 46 have been labelled "no *certiorari*" clauses or "ouster clauses" and have been dealt with in many reported cases. The cases show that when the right to *certiorari* had been ex-

pressly taken away by statute the courts rely upon the proposition that Parliament could not have intended a tribunal of limited jurisdiction to be permitted to exceed its authority without the possibility of direct correction by a superior court. It has been held that *certiorari* would issue, notwithstanding the presence of words taking away the right to apply for it, if the inferior tribunal was improperly constituted or if it lacked or exceeded jurisdiction, or failed to comply with essential preliminaries, or if a conviction or order had been procured by fraud or collusion or where there has been a breach of the rules of natural justice.

The courts have, however, always been careful to distinguish their intervention whether an excess of jurisdiction or error of law from an appellate function. Their jurisdiction over inferior tribunals is supervision, not review:

"... that supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise." (*Rex v. Nat Bell Liquors Ltd.*, [1922] 2 A.C. 128, 156).

In *Ex parte Bradlaugh*,⁽³⁾ there was an ouster clause, but Cockburn C.J. said at page 513:—

"I am clearly of the opinion that the section does not apply when the application for *certiorari* is on the ground that the inferior tribunal has exceeded the limits of its jurisdiction."

And Mellor J. added:—

"It is well established that the provision taking away the *certiorari* does not apply where there was an absence of jurisdiction. The consequences of holding otherwise would be that a metropolitan magistrate could make any order he pleased without question."

This case has been treated as a leading authority that "no *certiorari*" clauses do not oust the courts where there is an absence of jurisdiction (Lord Parker C.J. in *Reg. v. Hurst, Ex Parte Smith*,⁽⁴⁾ or an excess of jurisdiction (Denning L.J. in *Reg. v. Medical Appeal Tribunal, Ex Parte Gilmore*⁽⁵⁾).

In *Gilmore's* case, *supra*, in dealing with "no *certiorari*" clauses, Lord Denning observed, at page 586:—

"I would like to say a word about the old statutes which used in express terms to take away the remedy by *certiorari* by saying that the decision of the tribunal 'shall not be removed by *certiorari*.' Those statutes were passed chiefly between 1680 and 1848 in the days when the courts used *certiorari* too freely and quashed decisions for technical defects of form. In stopping this abuse the statutes proved very beneficial but the courts never allowed those statutes to be used as a cover for wrongdoing by tribunals. If tribunals were to be at liberty to exceed their jurisdiction without any check by the courts, the rule of law would be at an end."

And Romer L.J. added:—

"... it would be deplorable if we were constrained to hold that the decision of a medical appeal tribunal, however wrong in law, and however obviously wrong, was immune from review by Her Majesty's courts... it is not in the public interest that inferior tribunals of any kind should be ultimate arbiters on questions of law."

In the New Zealand case of *N.Z. Waterside Workers Federation Industrial Association of Workers v. Frazer & Ors.*,⁽⁶⁾ section 96(2) of Industrial Conciliation and Arbitration Act, 1908 of New Zealand provided that "no award, order, or proceeding of the court (of arbitration) shall be liable to be reviewed, quashed, or called in question by any court of judi-

cature on any account whatsoever". It was held by the Supreme Court of New Zealand that the section must be read subject to the proviso that the award, order or proceeding so protected from examination was an award, order or proceeding within the jurisdiction of the Arbitration Court, and that *certiorari* would go to bring into the Supreme Court an industrial award in respect of an excess of jurisdiction.

The Privy Council held more than a hundred years ago in *Colonial Bank of Australasia v. Willan*,⁽⁷⁾ that *certiorari* would issue in the face of a privative clause purporting to preclude review by *certiorari*, but only for a manifest defect of jurisdiction in the authority that made the order or for manifest fraud in the party procuring it. A decision which is manifestly outside jurisdiction therefore cannot be protected by such a privative clause.

And in the recent case of *Anisminic Ltd. v. Foreign Compensation Board*,⁽⁸⁾ the House of Lords held that a purported determination made by the Commissioner outside its jurisdiction was not a "determination" at all but a nullity; hence the privative clause was irrelevant, and a declaration that the "determination" was void could be granted.

Numerous other authorities can be cited which support the well established doctrine that when there is a defect in jurisdiction, the High Court will intervene. It would be quite intolerable if in such a case as this, there was no means of correcting the error. The control which the High Court exercises over inferior tribunals in a supervisory capacity extends not only to seeing that the inferior tribunals keep within their jurisdiction but also to seeing that they observe the law.

In my judgment the impugned order contains an error of law which caused the Industrial Arbitration Court to exceed its jurisdiction. It clearly had no power to make that order and in making it, it acted in excess of or without jurisdiction, that is to say, *ultra vires* the powers given to it under the Industrial Relations Act. The order must issue to quash the Order of the Industrial Arbitration Court of January 9, 1978 holding the applicant to be personally liable for the payment of the retrenchment benefits amounting to \$10,180.63.

Order accordingly.

Solicitors: Ng Kian Fong & Co.